

STATE OF ILLINOIS  
DEPARTMENT OF EMPLOYMENT SECURITY  
APPEALS DIVISION  
REFEREE'S DECISION

APPEAL DOCKET AR-3014084A

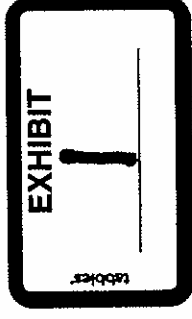
LOCAL OFFICE: 010

CLAIMANT: (APPELLANT)

Antone C Jarratt  
7135 S. Perry  
Chicago Apt. 1 IL 60621

EMPLOYER:

McDowell Trucking Inc  
4622 S Bishop St  
Chicago IL 60609-3240



SOCIAL SECURITY NUMBER: 340-54-6291

June 12, 2003

DATE OF APPEAL: March 14, 2003

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DATE OF RECONSIDERATION: March 18, 2003

June 13, 2003

**APPEARANCES/ISSUES/EMPLOYER STATUS:** The claimant and the employer appeared and testified at the hearing. The claimant was represented by legal counsel. The issue is: Was the claimant discharged for misconduct connected with work as defined in Section 602A of the Illinois Unemployment Insurance Act? The employer is a party to this appeal.

**FINDINGS OF FACT:** Claimant worked as a driver for the employer, a trucking firm. Claimant was discharged for being involved in an physical altercation with police at the premises of the employer. Claimant testified that he was returning to the office when he was approached by 7 police officers, some in uniform, other's in plainclothes. One officer had his handcuffs out and in his hand. Another officer said to him "So you don't want to give your cousin's name, huh." Claimant attempted to walk past them into the office to turn in his paperwork. When he turned away from the police, an officer grabbed his arm and claimant pulled his arm away. The officers then threw claimant to the ground and detained him. No charges were filed. The claimant said the officer was referring to earlier in the day when an officer investigating a burglary at the employer's asked him his cousin's name and claimant refused to give the officer that information. The employer testified that 4 police officer's approached claimant to ask him questions about the burglary. Although the employer was inside the office they could hear that the officer's were talking to claimant nicely, and the claimant would not respond to the officer's questions. The employer could not recall specifically what the police were saying to the questions, just that they were "routine" questions. The employer corroborated claimant's testimony that one officer grabbed the claimant's arm, claimant pulled his arm away and the police then threw claimant to the ground. The employer went further and stated the claimant did not struggle with the police after he was thrown to the ground. The employer stated that the claimant had been belligerent with them in the past. There is no specific policy that the claimant violated, but they felt they were harmed because the claimant could do something like this to one of them after hours or to one of the employer's clients.

**CONCLUSION:** Section 602A of "The Unemployment Insurance Act" provides, in part, that an individual shall be ineligible for benefits for the weeks in which he has been discharged for misconduct connected with his work and, thereafter, until he has become re-employed and has had earnings equal to or in excess of his current weekly benefit amount in each of four calendar weeks. The term "misconduct" means the deliberate and willful violation of a reasonable rule or policy of the employing unit, governing the individual's behavior in performance of his work, provided such violation has harmed the employing unit or other employees or has been repeated by the individual despite a warning or other explicit instruction from the employing unit.

The claimant's actions were not "misconduct" as described in the Act. The claimant was discharged for a physical altercation with the police. It is undisputed that the police initiated the altercation and the claimant did nothing to defend himself. There was an implication that the employer thought the claimant was belligerent with the police and that his belligerence led to the police's behavior. However, there was no policy cited that the claimant was obligated to cooperate with the police. If there were such a policy it would be reasonable policy if the questioning were in a controlled setting with counsel present if the claimant wished. The harm that the employer is concerned about did not actually occur and they failed to demonstrate how claimant's refusal to cooperate with police questioning jeopardizes their safety or the safety of their clients.

**DECISION:** The determination of the Local Office is SET ASIDE. No disqualification is imposed under Section 602A of the Act.

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AUDREY COSGROVE, Hearings Referee

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**RIGHT OF FURTHER APPEAL:** This decision will become final, unless WRITTEN NOTICE of appeal from the decision is filed within thirty days from the date of mailing shown above. The notice of appeal must be filed at the local unemployment insurance office where the claim is filed, with the Board of Review at 401 South State, Chicago, Illinois 60605, or by FAX at 312-793-2373.

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